Assessment Year 1987-88

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Income Tax Appeal No. 546 of 2001

The commissioner of Income-tax
Dehradun and another
…… Appellants

Versus

M/s O.N.G.C.
As agent of
M/s Brown & Root International Inc.,
Tel Bhawan, Dehradun.
……. Respondent

Mr. S.K. Post, learned counsel for the appellant.
Ms. J.P. Joshi, learned counsel for the respondent.

Coram : Hon'ble P.C. Verma, J.
Hon'ble P.C. Pant, J.

This is an appeal preferred under Section 260A of the Income Tax Act, 1961 filed by the Revenue against the judgment and order dated 07.12.2000 passed by the Income Tax Appellate Tribunal, New Delhi in I.T.A. No. 6148/Del/95.

2) M/s Brown and Root International Inc., respondent is a non-resident foreign company. During the year under consideration, O.N.G.C. was engaged in operations under the work contract with the above Non-resident company.

3) The question raised before us is as follows:

"Whether on the facts and circumstances of the case, the learned Income Tax Appellate Tribunal was legally correct in upholding the orders of CIT (A) that there is no scope of grossing-up and that the

income determined on notional basis in accordance with section 44 BB of the I.T. Act, 1961 was not liable to be grossed up u/s 195 A of the I.T. Act?"

4) Heard learned counsel for the parties and perused the record.

5) As this Court has discussed in Income Tax Appeal No. 470 of 2001; the Commissioner of Income Tax, Meerut and another Vs. O.N.G.C., Dehradun dated 30th September, 2003, the reasoning regarding this question is given in following paragraphs.

6) The main point, which is required to be decided is whether, the concept of multiple Stage Grossing up of income is applicable to the deemed profits derived by NRC under Section 44 BB of the Act. Whether, that concept can be applied by the Department of compute income falling under Section 44 BB of the Income Tax Act? It was argued on behalf of the Department, that in case of Tax Protected Contracts, Sec. 195A was attracted and therefore, the Department was entitled to compute the deemed profits derived by the NRC by applying the method of Multiple Stage Grossing up of income. We do not find any merit in this argument of the Department. Firstly, Section 44 BB is a complete code by itself. It is a charging section as far as the income of the NRC is concerned from oil exploration. It deals with computation of deemed profits. Secondly, Section 195 A comes under Chapter XVII of the Income Tax Act which deals with collection and recovery of tax whereas Section 44 BB comes under Chapter IV which deals with computation of business income. Therefore, Section 195 A will not assist the Department in applying the concept of Multiple Stage Grossing up of income to the profits derived by the NRC from oil exploration falling under Section 44 BB of

the Act. Section 44 BB contemplates computation of deemed profits as 10% of the aggregate receipts received by the NRC from oil exploration. That Section 44 BB(2) refers to items covered by Gross Receipts. In this case, the assessee has computed its income by taking into account the benefit which it has received on account of ONGC paying tax on its behalf. For example, it the assessee has paid tax on Rs. 200/- which is treated as its deemed profit, the Department has calculated that benefit at Rs. 250/- by resorting to Multi Stage Grossing up of income. This is not the case where the assessee is not paying tax on the benefit of Rs. 200/-. The dispute is only regarding the value of that benefit. According to the assessee the value of that benefit is Rs.200/-, whether one takes the contract to be a Protected contract or whether one takes that contract to be not Protected. In both the cases the value of the benefit will remain constant. Therefore, there is no merit in the case of the Department. Lastly, we may point out that Section 195 A of the Income Tax Act has no application. It is not a charging section. It provides for recovery of tax. It provides for tax deduction at source. The fact that TDS is deductible under Section 195A from the sum payable does not mean that the contractor is assessable for that receipt. In certain cases, the contractor may not be chargeable to tax in respect of those receipts. For example, in cases where the contractor has carried forward losses or in cases where the contractor suffers losses from other contracts which are liable to be set off. Therefore, the mechanism for recovery of tax mentioned under Section 195A will not make the receipt chargeable to tax. Further, Section 195A is confined to incomes falling under Chapter XVII. That Section 195A is introduced only for the purposes of TDS. Therefore, that section cannot be applied in support of Multiple Stage Grossing up of income in respect of computation of deemed profits under Section 44 BB of the

Income Tax Act. In order to illustrate the above examples of the assessee deriving benefit of Rs. 200/- computed as per single stage grossing up of income vis-à-vis Multiple Stage Grossing up of income we quote hereinbelow a Statement which illustrates the meaning of "Grossing up of Income", both Multi Stage and Single Stage.

7) Example of Grossing up where the tax on the personal income of the Non-resident Technician is to be borne by O.N.G.C.

Say the amount payable to the Non-resident Technician is Rs. 1000/- and for the sake of simplicity, the tax rate is 10%

	Stand of ONGC	**I.T. Department's Stand**
Income	1000.00	1000.00
Tax @ 10% on Rs. 1000	100.00	100.00
	1100.00	1100.00
Tax @ 10% on Rs. 100		10.00
		1110.00
Tax @ 10% on Rs. 10		1.00
		1111.00
Tax @ 10% on Re 1		0.10
		1111.10
Tax @ 10% on Rs. 0.10		0.01
		1111.11
Tax @ 10% on Rs. 0.01		0.001
Taxable Income	**1100.00**	**1111** (Approx.)
Tax @ 10%	**110.00**	**111.10**

8) For the reason aforesaid, we answer this question in the affirmative i.e. in favour of the assessee and against the Department.

9) Appeal is dismissed accordingly. No order as to costs.

(P.C. Pant, J.) **(P.C. Verma, J.)**

Dt. 29th June, 2005.

H. Negi